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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 23, 2024

SEAN F. MCVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARIA G.,

Plaintiff,

v.

MARTIN O'MALLEY,
Commissioner of Social Security,¹

Defendant.

NO. 1:23-CV-3112-TOR

ORDER AFFIRMING THE SOCIAL
SECURITY COMMISSIONER'S
DENIAL OF BENEFITS

BEFORE THE COURT is Plaintiff's motion seeking reversal of the Social Security Commissioner's denial of benefits (ECF No. 9). The Court has reviewed

¹ Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O'Malley is substituted for Kilolo Kijakazi as the defendant in this suit. No further action need be taken to continue this under the Social Security Act, 42 U.S.C. § 405(g).

1 the administrative record and the parties' completed briefing and is fully informed.
2 For the reasons discussed below, the Court DENIES Plaintiff's motion and
3 AFFIRMS the Social Security Commissioner's denial of benefits.

4 **JURISDICTION**

5 The Court has jurisdiction under 42 U.S.C. §§ 405(g), 1383(c)(3).

6 **STANDARD OF REVIEW**

7 A district court's review of a final decision of the Commissioner of Social
8 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
9 limited: the Commissioner's decision will be disturbed "only if it is not supported
10 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
11 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means
12 relevant evidence that "a reasonable mind might accept as adequate to support a
13 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently,
14 substantial evidence equates to "more than a mere scintilla[,] but less than a
15 preponderance." *Id.* (quotation and citation omitted). In determining whether this
16 standard has been satisfied, a reviewing court must consider the entire record as a
17 whole rather than searching for supporting evidence in isolation. *Id.*

18 In reviewing a denial of benefits, a district court may not substitute its
19 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
20 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one

1 rational interpretation, [the court] must uphold the ALJ's findings if they are
2 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674
3 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an
4 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless
5 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."
6 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's
7 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
8 *Sanders*, 556 U.S. 396, 409-10 (2009).

9 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

10 A claimant must satisfy two conditions to be considered "disabled" within
11 the meaning of the Social Security Act. First, the claimant must be "unable to
12 engage in any substantial gainful activity by reason of any medically determinable
13 physical or mental impairment which can be expected to result in death or which
14 has lasted or can be expected to last for a continuous period of not less than twelve
15 months." 42 U.S.C. § 423(d)(1)(A). Second, the claimant's impairment must be
16 "of such severity that he is not only unable to do his previous work[,] but cannot,
17 considering his age, education, and work experience, engage in any other kind of
18 substantial gainful work which exists in the national economy." 42 U.S.C. §
19 423(d)(2)(A).

1 The Commissioner has established a five-step sequential analysis to
2 determine whether a claimant satisfies the above criteria. See 20 C.F.R. §
3 404.1520(a)(4)(i)–(v). At step one, the Commissioner considers the claimant’s
4 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in
5 “substantial gainful activity,” the Commissioner must find that the claimant is not
6 disabled. 20 C.F.R. § 404.1520(b).

7 If the claimant is not engaged in substantial gainful activities, the analysis
8 proceeds to step two. At this step, the Commissioner considers the severity of the
9 claimant’s impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers
10 from “any impairment or combination of impairments which significantly limits
11 [his or her] physical or mental ability to do basic work activities,” the analysis
12 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant’s impairment
13 does not satisfy this severity threshold, however, the Commissioner must find that
14 the claimant is not disabled. *Id.*

15 At step three, the Commissioner compares the claimant’s impairment to
16 several impairments recognized by the Commissioner to be so severe as to
17 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §
18 404.1520(a)(4)(iii). If the impairment is as severe, or more severe than one of the
19 enumerated impairments, the Commissioner must find the claimant disabled and
20 award benefits. 20 C.F.R. § 404.1520(d).

1 If the severity of the claimant’s impairment does meet or exceed the severity
2 of the enumerated impairments, the Commissioner must pause to assess the
3 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),
4 defined generally as the claimant’s ability to perform physical and mental work
5 activities on a sustained basis despite his or her limitations (20 C.F.R. §
6 404.1545(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

7 At step four, the Commissioner considers whether, in view of the claimant’s
8 RFC, the claimant is capable of performing work that he or she has performed in
9 the past (“past relevant work”). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is
10 capable of performing past relevant work, the Commissioner must find that the
11 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of
12 performing such work, the analysis proceeds to step five.

13 At step five, the Commissioner considers whether, in view of the claimant’s
14 RFC, the claimant is capable of performing other work in the national economy.
15 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner
16 must also consider vocational factors such as the claimant’s age, education and
17 work experience. *Id.* If the claimant is capable of adjusting to other work, the
18 Commissioner must find that the claimant is not disabled. 20 C.F.R. §
19 404.1520(g)(1). If the claimant is not capable of adjusting to other work, the
20

1 analysis concludes with a finding that the claimant is disabled and is therefore
2 entitled to benefits. *Id.*

3 The claimant bears the burden of proof at steps one through four above.
4 *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009). If the
5 analysis proceeds to step five, the burden shifts to the Commissioner to establish
6 that (1) the claimant is capable of performing other work; and (2) such work
7 “exists in significant numbers in the national economy.” 20 C.F.R. § 416.1560(c);
8 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

9 **ALJ’s Findings**

10 On May 14, 2021, Plaintiff filed for Title II disability and disability
11 insurance benefits, with an alleged onset date of May 29, 2019. Administrative
12 Transcript (“Tr.”) ECF No. 6 at 22. Her application was initially denied on August
13 20, 2021, and upon reconsideration on December 27, 2021. Tr. 22. The
14 Administrative Law Judge (“ALJ”) held a telephonic hearing on November 1,
15 2022, and later denied the claim on November 22, 2022. *See generally* Tr. 22–36.
16 At that hearing, Plaintiff alleged disability based on fibromyalgia, chronic fatigue,
17 unspecified inflammatory arthritis, osteoarthritis of the spine and various joints,
18 depression, and anxiety. ECF No. 6 at 49–50. Plaintiff’s claim was then denied on
19 appeal on June 9, 2023. *Id.* at 6.

20 In denying Plaintiff’s claim, at step one the ALJ found that she has not

1 engaged in gainful activity since May 29, 2019, as evidence in a decline in income
2 until the onset date, and then no earnings thereafter. Tr. 25.

3 At step two, the ALJ determined that Plaintiff had the following severe
4 impairments: fibromyalgia, obesity, thyroid disorder, dermatitis, spinal disorder,
5 depression, and anxiety. *Id.*

6 At step three, the ALJ found that Plaintiff's impairments did not meet or
7 medically equal a listed impairment in 20 CFR Part 404, Subpart P, Appendix 1.
8 *Id.* As to Plaintiff's fibromyalgia, the ALJ determined that it did not equal a 14.00
9 listing. *Id.* Similarly, the ALJ determined that her obesity and thyroid disorders
10 did not equal listed impairments, though it was noted that obesity's aggravating
11 effects on other impairments was considered throughout the findings. Tr. 25–26.
12 Plaintiff's dermatitis does not meet the medical listing because she does not have
13 persisting skin lesions despite continued treatment. Tr. 26. Finally, the ALJ
14 determined that Plaintiff's spinal disorder did not meet Listing 1.15 or .1.16. *Id.*

15 As to Plaintiff's mental impairments, the ALJ found that whether considered
16 singularly or in combination, they did not meet or medically equal 12.04 or 12.06
17 and did not result in a "Paragraph B" impairment of one extreme limitation or two
18 marked limitations in functioning. *Id.*

19 Pursuant to step three, the ALJ considered Plaintiff's Residual Functional
20 Capacity ("RFC") and found that Plaintiff has the ability to perform light work as

1 defined in 20 CFR 404.1567(b). Tr. 27. In reaching this conclusion, the ALJ
2 considered both whether there are underlying medically determinable physical or
3 mental impairments, and then whether those impairments may reasonably be
4 expected to produce Plaintiff's pain or other symptoms. Tr. 28. In considering
5 Plaintiff's subjective symptoms, the ALJ must consider other evidence in the
6 record to determine if the symptoms limit her ability to do work. *Id.*

7 In considering the record as it relates to her physical conditions, the ALJ
8 found that some of Plaintiff's symptoms may reasonably be caused by medically
9 determinable impairments, but the intensity, persistence, and limiting effects of the
10 symptoms were not consistent with the record. Tr. 29. The ALJ noted that many
11 of Plaintiff's exams returned fairly normal or routine results, including two July
12 2018 exams, one which yielded relatively normal results in a range of motion and
13 some tenderness to provocative testing, and the other which did not support a
14 diagnosis of carpal tunnel. *Id.* Additionally, an ultrasound and CT scan performed
15 in December 2018 did not produce any evidence of abnormality. *Id.* And X-Rays
16 of Plaintiff spine taken in August 2021 showed unremarkable results, with mild
17 endplate changes in the cervical spine, and mild levoscoliosis in the lumbar spine.
18 *Id.* While Plaintiff reported numerous falls, the ALJ found that she has only
19 reported one fall and has denied dizziness. *Id.* Plaintiff has also described being in
20 constant, debilitating pain, but the ALJ found that the record reflects that she

1 typically presented without distress. *Id.* Finally, the ALJ found that Plaintiff had
2 reported her symptoms improved with treatment. Tr. 30.

3 As the record relates to her mental conditions, the ALJ found that evidence
4 supports Plaintiff's claim of depression and anxiety, but that these impairments
5 would not prevent her from performing simple or detailed tasks. Tr. 30.

6 At step four, the ALJ determined that Plaintiff is unable to perform any of
7 her past relevant work as a collector or property management aide. Tr. 34.

8 At step five, the ALJ determined that Plaintiff is able to perform work in the
9 national economy based on her age, education, work experience, and residual
10 functional capacity. Tr. 35. During the telephonic hearing, the vocational expert
11 testified that Plaintiff would be able to perform such jobs as marker, router, and
12 housekeeping as a cleaner. Tr. 35–36.

13 Based on the record, the ALJ found that Plaintiff is not disabled. Tr. 36.

14 ISSUES

15 Plaintiff seeks judicial review of the Commissioner's final decision denying
16 her application for Title II disability and disability insurance. Plaintiff raises the
17 following issues on review:

18 I. Whether the ALJ erred by not properly assessing Plaintiff's
19 subjective testimony.

20 II. Whether the ALJ erred by not properly assessing the medical
opinions.

1 III. Whether the ALJ erred by not properly assessing the lay
2 opinions.

3 IV. Whether the ALJ erred by not properly assessing the medically-
4 determinable, severe disorders.

5 ECF No. 9 at 2.

DISCUSSION

I. The ALJ did not err in assessing Plaintiff's subjective testimony.

7 Plaintiff asserts that the ALJ did not properly credit her own testimony
8 regarding the severity of her symptoms. ECF No. 9 at 3. Plaintiff cites eight areas
9 in which the ALJ failed to provide proper support in discounting her subjective
10 testimony: (1) the ALJ dismissed her claims solely because they were not
11 supported by objective evidence, which is impermissible, (2) the ALJ discounted a
12 medication side effect of dizziness because, it was incorrectly found that Plaintiff
13 “generally denied being dizzy,” (3) the ALJ failed to consider improvement with
14 treatment against the backdrop of the entire record, (4) the ALJ improperly
15 considered Plaintiff’s lack of “lifestyle modifications” such as a change in diet and
16 exercise, (5) in reaching the ultimate finding, the ALJ ignored areas where Plaintiff
17 had expressed symptoms of depression and anxiety, (6) the ALJ failed to consider
18 that Plaintiff would be seeking formal treatment in addition to medication for her
19 depression but for mounting medical bills, (7) that the ALJ arrived at the
20 conclusion that Plaintiff’s mental conditions inadequately severe in the face

1 evidence suggesting the contrary, and (8) the ALJ's assessment of Plaintiff's
2 abilities to perform tasks on a daily basis is misguided. *Id.* at 3–12.

3 An ALJ engages in a two-step analysis to determine whether to discount a
4 claimant's testimony regarding subjective symptoms. SSR 16-3p, 2016 WL
5 1119029, at *2. "First, the ALJ must determine whether there is 'objective'
6 medical evidence of an underlying impairment which could reasonably be
7 expected to produce the pain or other symptoms alleged.'" *Molina*, 674 F.3d at
8 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). "The
9 claimant is not required to show that [the claimant's] impairment 'could reasonably
10 be expected to cause the severity of the symptom [the claimant] has alleged; [the
11 claimant] need only show that it could reasonably have caused some degree of the
12 symptom.'" *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d
13 1028, 1035-36 (9th Cir. 2007)).

14 Second, "[i]f the claimant meets the first test and there is no evidence of
15 malingering, the ALJ can only reject the claimant's testimony about the severity of
16 the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the
17 rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
18 omitted). General findings are insufficient; rather, the ALJ must identify what
19 symptom claims are being discounted and what evidence undermines these claims.
20 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*

1 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
 2 explain why he or she discounted claimant's symptom claims). "The clear and
 3 convincing [evidence] standard is the most demanding required in Social Security
 4 cases." *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
 5 *Comm'r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

6 Factors to be considered in evaluating the intensity, persistence, and limiting
 7 effects of a claimant's symptoms include:

8 (1) daily activities; (2) the location, duration, frequency, and intensity
 9 of pain or other symptoms; (3) factors that precipitate and aggravate the
 10 symptoms; (4) the type, dosage, effectiveness, and side effects of any
 11 medication an individual takes or has taken to alleviate pain or other
 12 symptoms; (5) treatment, other than medication, an individual receives
 or has received for relief of pain or other symptoms; (6) any measures
 other than treatment an individual uses or has used to relieve pain or
 other symptoms; and (7) any other factors concerning an individual's
 functional limitations and restrictions due to pain or other symptoms.

13 SSR 16-3p, 2016 WL 1119029, at *7-*8; 20 C.F.R. §§ 404.1529(c), 416.929(c).

14 The ALJ is instructed to "consider all of the evidence in an individual's record,"
 15 "to determine how symptoms limit ability to perform work-related activities."

16 SSR 16-3p, 2016 WL 1119029, at *2.

17 *A. Plaintiff's contention that the ALJ's decision is improper because it
 18 discounts subjective testimony unsupported by objective testimony.*

19 If the ALJ determines that a plaintiff's subjective testimony is not creditable,
 20 the ALJ "must specifically make findings that support this conclusion," and the

1 findings “must be sufficiently specific to allow a reviewing court to conclude the
2 [ALJ] rejected the claimant's testimony on permissible grounds and did not
3 arbitrarily discredit [the] claimant's testimony.” *Rollins v. Massanari*, 261 F.3d
4 853, 856–57 (9th Cir. 2001). While an ALJ may not discount subjective testimony
5 only because it is not supported by objective medical evidence, such medical
6 evidence is still a relevant factor in determining the severity of a plaintiff's pain
7 and its disabling effects. *Id.* (citing 20 C.F.R. § 404.1529(c)(2)).

8 Here, the ALJ weighed the subjective testimony against the objective
9 medical findings and determined that Plaintiff's symptoms were not supported in
10 the intensity, degree, and persistence that she alleged. Plaintiff misguided her
11 argument that the ALJ simply supplanted her testimony for that of the medical
12 evidence presented. Rather the ALJ used the medical evidence, accompanied by
13 non-medical objective evidence, and concluded that the record itself did not
14 support the degree and intensity of Plaintiff's subjective reports of her limitations
15 because both the objective medical evidence and reports of Plaintiff's activity did
16 not support the severity of impairment alleged. Tr. 29.

17 Plaintiff also asserts that the ALJ improperly discounted her attested to pain
18 associated with fibromyalgia symptoms, as the nature of the ailment itself is
19 diagnosed by long term reported pain. ECF No. 9 at 4. This, coupled with
20 imaging that demonstrates paresthesia could be related to fibromyalgia, should

1 have led the ALJ to determine that Plaintiff's fibromyalgia was more impactful in
2 making a finding of disability. *Id.* (citing ECF No. 6 at 340). The Ninth Circuit
3 has recognized that fibromyalgia is a valid "basis for finding disability," and
4 developed two sets of criteria for assessment which generally include: widespread
5 pain that lasts for at least three months, either a manifestation of at least eleven
6 trigger points or six or more fibromyalgia-related symptoms, and lastly that there is
7 no other explanation for the pain experienced. *Revels v. Berryhill*, 874 F.3d 648,
8 656–7 (9th Cir. 2017). Further, the Ninth Circuit has noted that fibromyalgia
9 symptoms typically "wax and wane" and therefore review of the longitudinal
10 record is necessary. *Id.* at 657.

11 Here, the ALJ considered the longitudinal record, and determined that
12 Plaintiff suffers from fibromyalgia. Tr. 27. But in considering the record as a
13 whole, the ALJ found that Plaintiff's fibromyalgia was not a barrier to her
14 performing light work that does not require her to balance, stoop, kneel, crouch, or
15 crawl on more than a frequent basis, and handle objects more than frequently. Tr.
16 33. In making this finding, the ALJ noted that record was devoid of objective
17 evidence denoting physical abnormalities. *Id.*

18 *B. Plaintiff's contention that the ALJ incorrectly found that she "generally*
19 *denied being dizzy."*

20 Plaintiff alleges that the ALJ ignored areas in the record where she did report

1 dizziness, instead focusing only on areas where she denied being dizzy. ECF No. 9
2 at 5. This is not an accurate characterization of the ALJ's findings. The
3 determination states that “[a]dditionally, while she did mention that Abilify seemed
4 to cause some dizziness (Exhibit 12-F, p. 17; Exhibit 15-F, p. 8), she generally
5 denies dizziness (Exhibit 15-F, pp. 18, 21, 29, 32)”). This seems to reflect the
6 reality of the record in which Plaintiff does often deny dizziness. *See* ECF No. 6 at
7 488, 505, 528, 550, 553, 557, 561, 564, 571.

8 *C. Plaintiff's argument that the ALJ improperly considered both her*
9 *improvement with treatment and the fact that she did not follow*
10 *recommended “lifestyle modifications.”*

11 According to Plaintiff, the ALJ did not properly consider the strides forward
12 made with treatment in the broader context of her impairments. ECF No. 9 at 6.
13 Plaintiff notes multiple instances throughout the record that denote her ongoing
14 pain and the debilitating effects of her ailments. ECF No. 6 at 8–9. Further,
15 Plaintiff contends that the improvement in her symptoms was not sustained, but
16 rather “waxed and waned.” ECF No. 14 at 3.

17 An ALJ may take reports of daily activities and improvement after receiving
18 treatment as factors when assessing credibility of a plaintiff's subjective
19 description of symptoms. *Degen v. Berryhill*, 725 F. App'x 550, 553 (9th Cir.
20 2018) (citing *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir.

1 2009) (“[A]n ALJ may weigh inconsistencies between the claimant’s testimony and
2 his or her conduct, daily activities, and work record, among other factors.”)). It
3 was within reason for the ALJ to credit Plaintiff’s subjective complaints less when
4 weighed against the backdrop of improvement with treatment, as it appears
5 Plaintiff’s improvement followed an upward trend from December 2020 until
6 October 2022. Tr. at 29–30. The ALJ was clear and specific, citing findings
7 within the record in support of the conclusion, particularly that Plaintiff’s
8 testimony did not reflect the medical evidence provided. *Id.*

9 Further, Plaintiff faults the ALJ for considering that Plaintiff’s condition
10 worsened in October of 2022, due in part to a failure to follow recommendations in
11 diet and exercise that would ease her physical symptoms. ECF No. 9 at 9.
12 Plaintiff describes these recommendations as “lifestyle modifications,” under SSR
13 19-3p, which would not allow the ALJ to discredit testimony on such a basis. *Id.*
14 However, as Defendant points out, SSR 18-3p is predicated on the notion that but
15 for following the prescribed treatment, a plaintiff would not be disabled. ECF No.
16 13 at 9; *see also* Soc. Sec. Ruling, SSR18-3p; Titles II & XVI: Failure to Follow
17 Prescribed Treatment, SSR 18-3P (S.S.A. Oct. 2, 2018). A claimant’s
18 “unexplained, or inadequately explained, failure to seek treatment or follow a
19 prescribed course of treatment” can undermine symptoms reports. *Fair v. Bowen*,
20 885 F.2d 597, 603-04 (9th Cir. 1989). Here, the ALJ addressed Plaintiff’s own

1 description of “not taking very good care of herself,” and resulting symptoms as it
2 relates to her subjective description of the disability she experiences. The ALJ also
3 noted that Plaintiff was instructed that she would experience relief from
4 complained of symptoms with appropriate exercise. Tr. 30, ECF No. 6 at 488,
5 571, 632. The ALJ properly considered this information in deciding the amount of
6 weight to apply to Plaintiff’s subjective testimony.

7 *D. In reaching the ultimate finding, Plaintiff argues that the ALJ ignored areas
8 where she had expressed symptoms of depression and anxiety.*

9 Plaintiff alleges that the ALJ ignored areas in the record where she
10 expressed symptoms of depression and anxiety. ECF No. 9 at 9. However, the
11 ALJ noted that the record does reflect she does have mental health ailments but
12 does not show that such problems would prevent her from performing light work
13 with limited exposure to others. Tr. 30. Further, there are areas in the record that
14 notes that there were visits with medical providers where Plaintiff denied feelings
15 of depression and anxiety. ECF No. 6 at 487, 514, 535, 561. In sum, the ALJ did
16 not err in finding that Plaintiff’s depression and anxiety were not sufficiently
17 severe and thus did not find disability.

18 *E. Plaintiff’s contention that the ALJ failed to consider her medical bills as a
19 barrier to seeking additional treatment.*

20 Plaintiff contends the ALJ improperly characterized the record as it relates to

1 her treatment for depression, as the decision states that she was not seeking formal
2 treatment because her depression was managed with medication. ECF Nos. 9 at 9,
3 14 at 5. Plaintiff appears to argue that she was attempting to catch up on medical
4 bills, and therefore could not manage both medication and other forms of treatment
5 for depression. *Id.* However, Plaintiff stated in the record that she was seeking
6 additional medication-based treatment, which she seemed to respond well to. ECF
7 No. 6 at 476, 619. The ALJ's observation that Plaintiff also stated she was
8 satisfied with pursuing medication-based treatment does not amount to error in this
9 portion of the analysis of Plaintiff's subjective symptoms.

10 *F. Plaintiff's contention that the ALJ improperly arrived at the conclusion that*
11 *her mental conditions were inadequately severe based on evidence in the*
12 *record suggesting the contrary.*

13 Plaintiff alleges that the ALJ did not provide adequate support to the finding
14 that her mental impairments were not severe enough to find Plaintiff disabled.
15 ECF No. 9 at 10. However, the ALJ did provide adequate support, finding that
16 Plaintiff's impairments were not as severe as her subjective testimony would
17 suggest. In understanding, remembering or applying information, the ALJ
18 determined that Plaintiff has no limitations based on a lack of support in the record
19 that she has any significant problems with her ability to understand, remember, or
20 apply information, and she had reported engaging in activities, such as preparing

1 meals for her family, performing household chores, handling finances, shopping
2 online, and remembering and driving to her appointments. Tr. 26. In interacting
3 with others, the ALJ noted that the bulk of limitation Plaintiff experiences derives
4 from pain rather than mental impairment. *Id.* The ALJ noted that Plaintiff had a
5 moderate limitation regarding concentrating, persisting or maintaining pace, but
6 noted she acknowledged an ability to focus sufficiently enough to take care of
7 routine daily tasks, attend appointments, shop online for groceries and other items,
8 handle her finances, prepare meals for her family, do light household chores, and
9 follow a storyline on a television show. Tr. 27. Finally, as for adapting or
10 managing oneself, the ALJ determined Plaintiff had a mild limitation based on the
11 fact that she is nevertheless able to access treatment, request assistance when
12 necessary, and take care of her personal needs. Moreover, the record did not
13 reflect that her mental health issues prevent her from handling her day to day
14 responsibilities independently. *Id.*

15 As it relates to Plaintiff's subjective testimony, the ALJ found that based on
16 the record, Plaintiff's impairments would not prevent her from completing simple
17 or detailed task, provided the interaction with others is minimal, supported by her
18 own reports of minimal depression or anxiety. Tr. 40. This, coupled with
19 Plaintiff's ability to conduct daily activities and manage herself, led the ALJ to
20 conclude that Plaintiff's mental health impairments were not severe enough to

1 render a finding of disability.

2 *G. Plaintiff's contention that the ALJ's assessment of her abilities to perform*
3 *tasks on a daily basis is misguided.*

4 In addition to the argument that the ALJ erroneously found that her mental
5 impairments were not severe enough to make a finding of disability, Plaintiff also
6 argues that the ALJ discounted her physical abilities in the scope of the overall
7 finding. ECF No. 9 at 10. Plaintiff argues that the ALJ selectively reviewed
8 pieces of the record, and disregarded areas which would support disability. *Id.*
9 However, as discussed above, the ALJ provided specific and clear reasons as to
10 why it was determined that Plaintiff's subjective testimony was not consistent with
11 the rest of the record. The ALJ noted that both evidence in the record and
12 Plaintiff's description to the consultive examiner detail her ability to perform daily
13 tasks beyond her description of her physical capabilities. Tr. 31. Given the
14 description of her daily activities, the ALJ found these tasks to be persuasive when
15 considering Plaintiff's subjective description of her limitations. The Court finds
16 that the ALJ is not in error.

17 **II. The ALJ did not err because the medical opinions were properly**
18 **assessed.**

19 Plaintiff contends that the ALJ did not properly credit all the medical
20 opinions on record. Specifically, Plaintiff argues that the ALJ impermissibly

1 discounted evidence provided by Salvador Lopez, PA-C. ECF No. 9 at 12. In
2 discussion of her physical symptoms, she argues that too much weight was given
3 to Marquette Washington, ARNP, Dr. Merry Alto, and Dr. Mark Magdaleno
4 without the proper analysis. *Id.* at 16–17. And she also asserts that Dr. Linda
5 Lindman, Dr. Gerald Gardner, and Dr. John Wolfe were likewise given too much
6 weight in the discussion of her physical symptoms. *Id.* at 17.

7 As Plaintiff's alleged onset date was May 29, 2019, the new regulations for
8 how an ALJ must evaluate medical opinion evidence under Titles II is controlling.
9 See 20 C.F.R. § 404.1520c (governing medical opinion evidence under Title II);
10 Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 Fed. Reg.
11 5844-01 (Jan. 18, 2017), available at 2017 WL 168819. An ALJ must consider
12 and evaluate the persuasiveness of all medical opinions or prior administrative
13 medical findings from medical sources. 20 C.F.R. §§ 404.1520c(a)–(b). The
14 factors for evaluating the persuasiveness of medical opinions and prior
15 administrative medical findings include; supportability, consistency, relationship
16 with the claimant, specialization, and “other factors that tend to support or
17 contradict a medical opinion or prior administrative medical finding,” including
18 but not limited to “evidence showing a medical source has familiarity with the
19 other evidence in the claim or an understanding of our disability program's policies
20 and evidentiary requirements.” 20 C.F.R. §§ 404.1520c(c)(1)–(5).

1 The ALJ is required to explain how the two most important factors,
2 supportability and consistency, were considered. 20 C.F.R. § 404.1520c(b)(2).

3 These factors are defined as follows:

4 (1) Supportability. The more relevant the objective medical evidence
5 and supporting explanations presented by a medical source are to
6 support his or her medical opinion(s) or prior administrative medical
finding(s), the more persuasive the medical opinions or prior
administrative medical finding(s) will be.

7 (2) Consistency. The more consistent a medical opinion(s) or prior
8 administrative medical finding(s) is with the evidence from other
9 medical sources and nonmedical sources in the claim, the more
10 persuasive the medical opinion(s) or prior administrative medical
finding(s) will be.

11 20 C.F.R. § 404.1520c(c)(1)-(2).

12 The ALJ may, but is not required to, explain how “the other most persuasive
13 factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R. §§
14 404.1520c(b)(2). However, where two or more medical opinions or prior
15 administrative findings “about the same issue are both equally well-supported ...
16 and consistent with the record ... but are not exactly the same,” the ALJ is required
17 to explain how “the most persuasive factors” were considered. 20 C.F.R. §
18 404.1520c(b)(2).

19 These regulations displace the Ninth Circuit's standard that require an ALJ
20 to provide “specific and legitimate” reasons for rejecting an examining doctor's

1 opinion. *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022).

2 *A. Salvador Lopez, PA-C*

3 Plaintiff asserts that the ALJ failed to address Mr. Lopez's February 2019
4 findings that she is restricted from working more than 32 hours a week and is
5 unable to type. ECF No. 9 at 12. This opinion by Mr. Lopez, Plaintiff contends,
6 cannot be squared with the RFC finding in which Plaintiff can work "on a regular
7 and continuing basis" of 8 hours per day, 5 days a week, and would be able
8 occasionally use her fingers in her work. *Id.* at 12–13 (quoting Tr. 27). Plaintiff
9 also argues that the ALJ did not properly note the November 2021 report by Mr.
10 Lopez, and dismissed it based on an improper characterization of its contents. *Id.*
11 at 13–15. Additionally, Plaintiff argues that the ALJ did not explain how the
12 November 2021 report was inconsistent with the rest of the record. *Id.* at 15.

13 While an ALJ is not required to articulate how each medical opinion from
14 one medical source is considered individually per 20 C.F.R. § 404.1520c(b)(1), in
15 this matter the ALJ did note the 2019 report, denoted 5F in the record, and
16 provided justification for how the findings fit into the overall disability analysis.
17 Tr. 27, 29, 30. It is unclear whether the contention that Plaintiff is only able to
18 work for 32 hours a week is reported by Plaintiff herself as it is listed under a
19 "subjective" heading, or if it is an opinion of Mr. Lopez. ECF No. 6 at 380.
20 Regardless, the statement in the report does not appear to have support related to

1 the rest of the visit on February 20, 2019, and Defendant contends that a finding
2 that Plaintiff is unable to perform more than 32 hours of work a week does not
3 amount to a medical opinion. ECF No. 13 at 12. The Court agrees, the statement
4 does not fit squarely within the 20 C.F.R. § 404.1513(a)(2) medical opinion
5 definition, which requires “a statement from a medical source about what [a
6 plaintiff] can still do despite [his or her] impairment(s) and whether [she or he]
7 have one or more impairment-related limitations or restrictions in the following
8 abilities:”

- 9 (i) Your ability to perform physical demands of work activities, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping, or crouching);
- 12 (ii) Your ability to perform mental demands of work activities, such as understanding; remembering; maintaining concentration, persistence, or pace; carrying out instructions; or responding appropriately to supervision, co-workers, or work pressures in a work setting; [and]
- 15 (iii) Your ability to perform other demands of work, such as seeing, hearing, or using other senses.

17 Mr. Lopez’s report on July 8, 2021, is devoid of an explanation as to why
18 Plaintiff is restricted to 32 hours a week, and thus the ALJ did not err by not
19 explicitly addressing it.

20 As to the November 2021 report, Plaintiff alleges that the ALJ did not fully

1 consider the nature of her disorders in dismissing it. Specifically, Plaintiff argues
2 that the record reflects more demonstrative evidence that support Mr. Lopez's
3 finding that she experiences dizziness, drowsiness, and pain. ECF No. 9 at 13.
4 Further, the ALJ improperly discounted Mr. Lopez's records of Plaintiff's mental
5 health disorders, as Mr. Lopez had been treating Plaintiff's physical and mental
6 ailments. The ALJ stated that the November 2021 report was discounted because
7 it was a form that provided no support or reasoning for the findings therein. Tr. 33.
8 The Ninth Circuit has held that an ALJ may "permissibly reject[] ... check-off
9 reports that [do] not contain any explanation of the bases of their conclusions."
10 *Molina*, 674 F.3d at 1111 (quoting *Crane v. Shalala*, 76 F.3d 251, 253 (9th
11 Cir.1996)). While not necessarily a "check-the-box," style form, the November
12 2021 report is a standardized form that the ALJ determined was reflective of
13 Plaintiff's own statements about her physical and mental impairments rather than
14 objective findings by Mr. Lopez. Tr. 32. The ALJ found no support for the
15 conclusions in the report and determined that they were not entirely consistent with
16 the record. *Id.*

17 Plaintiff also finds fault in that the ALJ did not consider that Mr. Lopez has
18 been her treating provider, and thus is qualified to opine on the impacts of her
19 mental health issues. EFC No. 9 at 15. However, under 20 C.F.R. § 404.1520c(a),
20 and ALJ is not required to give any additional deference to a treating medical

1 opinion. Instead, an ALJ must evaluate the opinion for the above-described
2 supportability and consistency factors. *Id.* In this case, the ALJ determined that
3 Mr. Lopez's assessment of the impact of Plaintiff's dizziness, drowsiness, and pain
4 were inconsistent with the rest of the record and unsupported. Tr. 33. Thus, the
5 ALJ did not err in relation to Mr. Lopez's report.

6 *B. Marquetta Washington, ARNP, Dr. Merry Alto, and Dr. Mark*
7 *Magdaleno*

8 Plaintiff argues that the ALJ improperly credited the medical opinions
9 produced by Ms. Washington, Dr. Alto, and Dr. Magdaleno. ECF No. 9 at 16.
10 Specifically, Plaintiff argues that the findings did not demonstrate the support each
11 was founded on, nor how they were consistent with the record. *Id.* Plaintiff points
12 to places where Ms. Washington's assessment of Plaintiff's abilities that may have
13 altered the ALJ's findings if considered.

14 As to Dr. Alto and Dr. Magdaleno, the ALJ determined that both doctors
15 reviewed the evidence in the record and found that Plaintiff did suffer from the
16 ailments she described, including fibromyalgia, chronic pain, spinal disorders,
17 obesity, and the debilitating effects that result. Tr. 31–32. However, both doctors
18 determined that even in light of Plaintiff's physical disorders, she is still able to
19 lift, carry, and push 50 pounds occasionally and 25 pounds often, as well as bend,
20 balance, crawl, and kneel occasionally, with no additional limitations. *Id.* Ms.

1 Washington's assessment is much the same, finding that after a physical exam,
2 Plaintiff does have physical ailments, but had the same functional capabilities as
3 determined by both Dr. Alto and Dr. Magdaleno. Tr. 31; ECF No. 6 at 440–46. In
4 sum, the ALJ did not err in the supportability or consistency factors in evaluating
5 the medical opinions as they relate to Plaintiff's physical capabilities, because they
6 have each arrived at a consistent result.

7 *C. Dr. Linda Lindman, Dr. Gerald Gardner, and Dr. John Wolfe*

8 Plaintiff similarly takes issue with the ALJ's determination of supportability
9 and consistency as to her mental health assessment. She argues that the ALJ did
10 not properly apply her own testimony to the application of the medical findings as
11 it relates to her depression and mental cognition. ECF No. 9 at 17. Further she
12 asserts that Dr. Lindman's finding of a mild workplace limitation was in
13 contradiction with the results of the exam. *Id.* However, Dr. Lindman and the ALJ
14 both took into account the stated limitations derived from the exam of Plaintiff.
15 After an examination, Dr. Lindman found that Plaintiff had a depressive disorder
16 and an unspecified anxiety disorder, and therefore her abilities in the workplace
17 and work attendance would be mildly impaired, also due in part to physical pain.
18 ECF No. 6 at 438. The ALJ then relied on this finding, in conjunction with the
19 consistent findings of Dr. Gardner and Dr. Wolfe, to determine that Plaintiff's
20 capabilities in the workplace would be slightly impaired, and as a result, she could

1 maintain both simple and detailed, but not complex, work that deals with
2 superficial interactions with co-workers and the general public. Tr. 34. Therefore,
3 the ALJ did not commit reversible error in finding that Plaintiff was not disabled
4 based on the review of the medical records.

5 **III. The ALJ did not err in the review of lay opinions.**

6 Plaintiff argues that the ALJ should have subscribed more weight to the lay
7 opinions contained within the record. ECF No. 9 at 17. Plaintiff assigns blame in
8 the form of reversible error because she claims that the ALJ misstated the rule
9 regarding lay opinions and thus failed to consider them under the regulation. *Id.* at
10 19.

11 Under 20 C.F.R. § 404.1545(a)(3), an ALJ is tasked with considering all
12 evidence that demonstrate limitation, including that which is offered by lay people.
13 Additionally, the ALJ will weigh the description of pain and limitation against the
14 objective medical evidence provided to make a determination about intensity,
15 persistence, and limiting effects of the symptoms. 20 C.F.R. § 404.1529(c)(3)–
16 (4). The ALJ is to “consider any personal observations of [non-medical sources] in
17 terms of how consistent those observations are with the individual's statements
18 about his or her symptoms as well as with all of the evidence in the file.” SSR 16–
19 3p, 2017 WL 5180304, at *7. In the present matter, the ALJ agreed with the
20 characterization of Plaintiff's capabilities as stated by the opinions of her family

1 members. Tr. 34. However, the ALJ did not agree that the degree and severity as
2 described by the opinions was consistent with the rest of the record, including
3 Plaintiff's daily activities. *Id.* Because the ALJ gave specific, clear, and
4 convincing reasons for rejecting Plaintiff's lay testimony, and such analysis was
5 consistent with the relevant rules regarding the assessment of opinions on
6 Plaintiff's abilities, the ALJ did not reversibly err in this consideration. *Valentine*
7 *v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009).

8 **IV. The ALJ did not reversibly err in assessing Plaintiff's medical**
9 **disorders.**

10 Plaintiff claims the ALJ did not consider all of her medically-determinable
11 impairments ("MDIs") in reaching a findings of not-disabled. In reaching this
12 conclusion, Plaintiff claims that the ALJ should have taken secondary effects from
13 her disordered sleeping into account in reaching the determination. ECF No. 9 at
14 20. Plaintiff argues that the ALJ reversibly erred by not crediting Mr. Lopez's
15 findings that she "may be experiencing" mal effects of disordered breathing in her
16 sleep, which results in her sleeping up to seventeen hours a day. *Id.* at 20–21.
17 However, this determination did not definitely attribute Plaintiff's symptoms to her
18 inability to retain a full restful night sleep. Additionally, Plaintiff cites to a sleep
19 study referred out by Mr. Lopez which revealed a drop in oxygen levels while she
20 slept. *Id.* (citing ECF No. 6 at 609–15). This study revealed no constructive

1 findings or diagnosis. As a result, the Court determines that the ALJ did not
2 reversibly err in reaching a finding that Plaintiff is not disabled.

3 | ACCORDINGLY, IT IS HEREBY ORDERED:

4 1. Plaintiff's motion seeking a reversal of the order of the Social Security
5 Commissioner (ECF No. 9) is **DENIED**.

6 2. The Commissioner's Brief (ECF No. 13) is **GRANTED**. The final decision
7 of the Social Security Commissioner is **AFFIRMED**.

The District Court Executive is directed to enter this Order and Judgment, furnish copies to counsel, and close the file.

10 DATED February 23, 2024.



THOMAS O. RICE
United States District Judge